

ORDINANCE NO. 2002-003

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 26, ARTICLE III, DIVISION 2 OF THE PALM BEACH COUNTY CODE (CODIFYING ORDINANCE 93-5), RELATING TO THE PALM BEACH COUNTY MUNICIPAL SERVICE BENEFIT UNIT FOR FIRE HYDRANT MAINTENANCE AND RENTAL - BOCA RATON AND THE PALM BEACH COUNTY MUNICIPAL SERVICE BENEFIT UNIT FOR FIRE HYDRANT MAINTENANCE AND RENTAL - RIVIERA BEACH; PROVIDING FOR LEGISLATIVE FINDINGS; PROVIDING THAT THE SPECIAL ASSESSMENT SHALL NOT BE SEPARATELY ASSESSED AGAINST CERTAIN COMMON AREAS AND COMMON ELEMENTS WITHIN CERTAIN ASSOCIATION COMMUNITIES; CLARIFYING CERTAIN PUBLIC HEARING REQUIREMENTS; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 125.01(1)(q), Florida Statutes, authorizes the Board of County Commissioners to establish, and subsequently merge or abolish, municipal service taxing and/or benefit units for any part, or all, of the unincorporated area of Palm Beach County for the provision of municipal services from funds derived within the municipal service taxing or benefit unit; and

WHEREAS, Chapter 26, Article III, Division 2, of the Palm Beach County Code (the "Code") established the "Palm Beach County Municipal Service Benefit Unit for Fire Hydrant Maintenance and Rental - Boca Raton" and the "Palm Beach County Municipal Service Benefit Unit for Fire Hydrant Maintenance and Rental - Riviera Beach" to fund certain fire hydrant rental and maintenance charges; and

WHEREAS, Sections 718.120(1) and 719.114(1), Florida Statutes, provide that special assessments may not be separately assessed against condominium common elements and cooperative common areas if such properties are owned by the condominium association or the cooperative association or are jointly owned by the owners of the condominium or cooperative parcels; and

WHEREAS, because the use of common area properties within

1 homeowners' association communities is substantially similar to the
2 use of condominium common elements and cooperative common areas,
3 the Board of County Commissioners finds that it is fundamentally
4 fair and reasonable to treat these properties similarly by not
5 separately assessing homeowners' association community common areas
6 in the same manner provided for condominium common elements and
7 cooperative common areas; and

8 **WHEREAS,** the Board of County Commissioners finds and
9 determines that the rental and maintenance of fire hydrants for the
10 provision of fire suppression services to properties within an
11 association community primarily benefit the association community
12 parcels to which the common areas and common elements are
13 appurtenant and incidental, and it therefore is fair and reasonable
14 to assess the association community parcels and to not separately
15 assess common area and common element properties; and

16 **WHEREAS,** the Board of County Commissioners finds that a public
17 purpose is served by treating similarly situated association
18 community common area properties alike; and

19 **WHEREAS,** the Board of County Commissioners further desires to
20 amend the Code to clarify that the public hearing requirement is
21 triggered only by certain circumstances as set forth in Florida
22 Statutes.

23 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
24 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:**

25 **Section 1.** The facts and legislative findings set forth in
26 the preambles to this Ordinance are hereby approved and adopted.

27 **Section 2.** Chapter 26, Article III, Division 2, Section
28 26-109, subsection (a), of the Palm Beach County Code, is hereby
29 amended as follows:

30 (a) The board of county commissioners is hereby
31 authorized to levy and collect special assessments on the
32 real property within "MSBU - Boca Raton," which includes

1 the portion of the unincorporated area of Palm Beach
2 County described in exhibit "A," and "MSBU - Riviera
3 Beach," which includes the portion of the unincorporated
4 area of Palm Beach County described in exhibit "B," in
5 order to fund the rental and maintenance of fire hydrants
6 servicing those areas which are necessary to provide fire
7 protection to those areas pursuant to section
8 125.01(1)(q), Florida Statutes.

9 Notwithstanding anything contained herein to the
10 contrary, the special assessments authorized herein shall
11 not be levied or collected against condominium common
12 elements as defined in Chapter 718, Florida Statutes,
13 cooperative common areas as defined in Chapter 719,
14 Florida Statutes, and homeowners' association community
15 common areas as defined in Chapter 720, Florida Statutes,
16 if such common elements or common areas are owned by the
17 condominium association, the cooperative association, or
18 the homeowners' association, or if such common elements
19 or common areas are jointly owned by the owners of the
20 condominium parcels, the owners of the cooperative
21 parcels or the owners of the homeowners' association
22 community parcels.

23 **Section 3.** Chapter 26, Article III, Division 2, Section
24 26-109, subsection (d), of the Palm Beach County Code, is hereby
25 amended as follows:

26 (d) When required by section 197.3632(4)(a),
27 Florida Statutes, the board shall hold a public hearing
28 between June 1 and September 15 to adopt the non-ad
29 valorem assessment roll and corresponding rate
30 resolution. ~~The board shall hold a public hearing to~~
31 ~~adopt the rate resolution and the non-ad valorem~~
32 ~~assessment roll for the ensuing fiscal year. The hearing~~

1 ~~shall be held between June 1 and September 15 of each~~
2 ~~year.~~ At such hearing, the board shall hear testimony
3 from all interested persons and shall receive written
4 objections, if any, pursuant to section 197.3632(4)(c),
5 Florida Statutes. The board shall make any increase,
6 decrease or revision to any proposed assessment as it
7 deems necessary or appropriate. The board may continue
8 the public hearing to a date and time certain without the
9 necessity of further public notice to allow, prior to
10 final adoption, any changes, modifications or revisions
11 to the resolution and/or the assessment roll or for such
12 other reason deemed necessary in the sole discretion of
13 the board.

14 Section 4. REPEAL OF LAWS IN CONFLICT:

15 All local laws and ordinances in conflict with any provisions
16 of this Ordinance which are within the County's power to repeal are
17 hereby repealed to the extent of such conflict.

18 Section 5. SEVERABILITY:

19 If any section, paragraph, sentence, clause, phrase, or word
20 of this Ordinance is for any reason held by the Court to be
21 unconstitutional, inoperative, or void, such holding shall not
22 affect the remainder of this Ordinance.

23 Section 6. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:

24 The provisions of this Ordinance shall become and be made a
25 part of the Code of Laws and Ordinances of Palm Beach County,
26 Florida. The sections of this Ordinance may be renumbered or
27 relettered to accomplish such, and the word "ordinance" may be
28 changed to "section", "article", or other appropriate word.

1 SECTION 7. EFFECTIVE DATE:

2 The provisions of this Ordinance shall become effective upon
3 filing with the Department of State.

4 **APPROVED and ADOPTED** by the Board of County Commissioners
5 of Palm Beach County, Florida, on this the 26 day of
6 February, 2002.

7
8 DOROTHY H. WILKEN, CLERK PALM BEACH COUNTY, FLORIDA,
9 BY ITS BOARD OF COUNTY COMMISSIONERS

10 By: *Shirley C. Hickman* By: *Warren H. Newell*
11 Deputy Clerk Chairman

12 APPROVED AS TO FORM AND
13 LEGAL SUFFICIENCY

14 By: *Sharon Brown*
15 County Attorney

16 Filed with the Department of State on the 8th day
17 of March, 2002.

18 H:\Agenda Items & Contracts\Contract\hrydrant-ord-amdt.final1-10-02.wpd

5 STATE OF FLORIDA, COUNTY OF PALM BEACH
 I, DOROTHY H. WILKEN, ex-officio Clerk of the
 Board of County Commissioners certify this to be a
 true and correct copy of the original filed in my office
 on February 26, 2002
 DATED at West Palm Beach, FL on 4/1/02
 DOROTHY H. WILKEN, Clerk
 By: *Sharon Brown* D.C.